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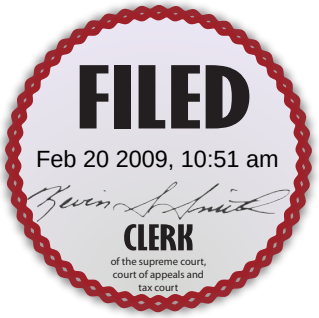

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IN THE
COURT OF APPEALS OF INDIANA

KUFANYO BROOKS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0806-CR-560
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0708-FA-39

February 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kufanyo Brooks was convicted of Dealing in Cocaine,[1] a class A felony, Possession of Cocaine,[2] a class B felony, and received a thirty-year executed sentence. Brooks challenges the convictions and sentence, presenting the following restated issues for review:

1. Was the evidence sufficient to support the convictions?

2. Was Brooks's sentence inappropriate?

We affirm.

The facts favorable to the convictions are that twice on July 3, 2007, Brooks sold cocaine to a confidential informant (CI) while at his (Brooks's) residence in Lafayette, Indiana. The first buy took place at about 12:33 a.m., when the CI gave Brooks $100 for what they agreed would be a gram of cocaine. Nearby police officers monitored the transaction via an audio wire concealed on the CI. After the transaction was completed and the CI rendezvoused with police, it was determined that Brooks had delivered less than half a gram of cocaine, so another purchase was arranged. Following the same procedure as before, the CI traveled to Brooks's house, this time receiving a gram of cocaine in exchange for $50. The location of the drug buys was within 1000 feet of a family housing complex.

The CI later picked Brooks's photo from a photo array and Brooks was charged under Counts I and II with dealing in cocaine as class A felonies, and under Count III with possession of cocaine as a class B felony. Following a jury trial, Brooks was found guilty as charged on Counts II and III. At the conclusion of the sentencing hearing, the court found as

[1] Ind. Code Ann. § 35-48-4-1 (West, PREMISE through 2008 2nd Regular Sess.).
[2] I.C. § 35-48-4-6 (West, PREMISE through 2008 2nd Regular Sess.).

mitigating factors that (1) Brooks has family support, (2) the crime neither caused nor threatened serious harm to persons or property, (3) Brooks's imprisonment would result in hardship to his dependents, and (4) he is remorseful. As aggravating circumstances, the court found that (1) Brooks has a history of criminal or delinquent behavior, (2) he violated the conditions of his parole, and (3) there were children present during at least one of the crimes. Upon its conclusion that the aggravators and mitigators balanced, the court sentenced Brooks to the advisory sentence of thirty years for the dealing conviction and ten years for the possession conviction, to be served concurrent with each other but consecutive to a sentence imposed in a case involving a separate conviction.

1.

Brooks contends the evidence was not sufficient to prove he was the person who sold cocaine to the CI. Our standard of review for challenges to the sufficiency of evidence is well settled.

> When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007). Moreover, the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Gleaves v. State*, 859 N.E.2d 766. In this case, Brooks seeks a ruling that, by application of

the principal of incredible dubiosity, the CI's testimony is not worthy of belief. For testimony to be so inherently incredible that it is to be disregarded on this basis, "the witness must present testimony that is inherently contradictory, wholly equivocal or the result of coercion, and there must also be a complete lack of circumstantial evidence of the defendant's guilt." *Clay v. State*, 755 N.E.2d 187, 189 (Ind. 2001).

In support of the claim that the CI's testimony was incredibly dubious, Brooks notes the improbability "that an experienced drug purchaser would not notice that over half of the one gram purchase was missing." *Appellant's Brief* at 8. Brooks also complains that the procedures used were suspect, most notably that the search of the CI both pre- and post-buy were not thorough enough, thus, "[i]t would have been a simple matter for the confidential informant to carry drugs on him, and retain the money." *Id*. Brooks also contends the CI's motivation was "never revealed." *Id.* at 9.

We note as a preliminary matter that the CI testified he had known Brooks, whom the CI referred to as "Fuzz", *Transcript* at 119, for seven or eight years. We understand that Brooks is not arguing that the CI was merely mistaken in identifying Brooks as the person who sold him drugs. Rather, Brooks contends the CI was lying about Brooks's involvement. In any event, the defects of which Brooks complains, viewed either individually or in the aggregate, are not so significant that they render the CI's testimony incredibly dubious. Rather, they were placed before the jury and thus considered in deciding the weight and credibility to assign the CI's testimony. *See Miller v. State*, 770 N.E.2d 763 (Ind. 2002). Moreover, the CI's testimony was not entirely uncorroborated; among other things, the drug

buys occurred at Brooks's house. In any event, the CI's testimony, taken as a whole, was neither inherently contradictory nor entirely uncorroborated so as to render it incredible as a matter of law. This being Brooks's only challenge to the sufficiency of evidence, the claim fails.

2.

Brooks contends his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Brooks bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

Concerning his character, Brooks notes, in addition to the mitigators found by the trial court, that he "has a fairly substantial work history", *Appellant's Brief* at 11, supports five children, and tested in the low-moderate risk need category on an LSI-R. test.[3] Balanced against those, however, is Brooks's criminal history. Although it is not as extensive as others we have seen, it includes a prior drug conviction, which reveals that the instant offenses were

[3] LSI-R is an acronym for "Level of Services Inventory". *Green Appendix* at 6. To complete this inventory, information collected during an interview with the subject is evaluated to determine the probability that the subject will re-offend within one year if no services are provided. In Brooks's case, the inventory yielded a score indicating there is a 31.1% chance that Brooks will re-offend in those circumstances.

part of an established pattern. Moreover, his probation on the prior drug offense was first revoked for accumulating additional charges, including two counts of resisting law enforcement, striking a law enforcement animal, and operating a vehicle while suspended. Brooks's probation was revoked a second time when he was arrested and charged with the instant offenses. These facts reveal that Brooks has not taken advantage of the grace extended to him on previous occasions by courts granting probation, and they certainly do not reflect highly on his character.

With respect to the circumstances of the crime, the trial court found as a mitigator that the offense neither caused nor harmed a person or property, and that is true. On the other hand, we note that Brooks sold the drugs out of the home he shared with his girlfriend and their five children. During the second drug buy, officers monitoring the transaction via the audio wire could hear children in the background. This means children were present during at least the second drug transaction. All in all, as was true in reviewing the assessment of Brooks's character, we find that aggravators and mitigators are evenly balanced.

In summary, we find no compelling reason inherent in the nature of this offense or Brooks's character that renders the sentence imposed by the trial court inappropriate.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur.